

1979

CODE OF IOWA  
SUPPLEMENT

CONTAINING A REPRINT OF THE  
USURY LAWS

[Chapter 535 as amended plus other scattered  
related sections of the Code]

Printed by authority of section 14.21 of the Code

## **PREFACE**

This pamphlet is a reprint of Chapter 535 of the Iowa Code, 1979, (the usury law) as amended by the 68th G.A., 1979 Session. It may be cited "Section \_\_, Code 1979." If a section as reprinted is amended, add the 68th G.A. citation found at the end of the section.

The pamphlet includes the temporary provisions of the 1978 Session of the 67th G.A. which were included in the 1979 Code that were re-enacted and made permanent by the 1979 Session of the 68th G.A. The temporary provisions, included in the 1979 Code, that were not re-enacted are eliminated.

Several sections of other chapters that relate to usury provisions are included following the reprint of Chapter 535.

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# CHAPTER 535

## MONEY AND INTEREST

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**535.1 Denominations of money.** *The money of account of this state is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in the above denominations. Demands expressed in money of another denomination shall not be affected by the provisions of this section, but in any action or proceeding based thereon it shall be reduced to and computed by the denominations given. [Code 1979]*

### **535.2 Rate of interest.**

1. Except as provided in subsection 2 hereof, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:

- a. Money due by express contract.
- b. Money after the same becomes due.
- c. Money loaned.
- d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.
- e. Money due on the settlement of accounts from the day the balance is ascertained.
- f. Money due upon open accounts after six months from the date of the last item.
- g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

2. Any domestic or foreign corporation, and any real estate investment trust as defined in section 856 of the Internal Revenue Code, and any person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the Securities Exchange Act of 1934, 48 Stat. 881, 15 United States Code 78A, as amended, and any person borrowing money or obtaining credit in the amount of one hundred thousand dollars or more, exclusive of interest, for business purposes, and any person borrowing money or obtaining credit in the amount of five hundred thousand dollars or more, exclusive of interest, for agricultural purposes, may agree in writing to pay any rate of interest in excess of the rate permitted by this section, and no such corporation or real estate investment trust or person so agreeing in writing shall plead or interpose the claim or defense of usury in any action or proceeding.

Amendment to subsection 2 effective July 1, 1979

3. a. The maximum lawful rate of interest which may be provided for in any written agreement for the payment of interest entered into during any calendar month commencing on or after April 13, 1979, shall be two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by the board of governors of the federal reserve system for the calendar month second preceding the month during which the maximum rate based thereon will be effective, rounded to the nearest one-fourth of one percent per year.

On or before the twentieth day of each month the superintendent of banking shall determine the maximum lawful rate of interest for the following calendar month as prescribed herein, and shall cause this rate to be published, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county, prior to the first day of the following calendar month. This maximum lawful rate of interest shall be effective on the first day of the calendar month following publication. The determination of the maximum lawful rate of interest by the superintendent of banking shall be exempt from the provisions of chapter 17A.

Amendment to subsection 3, paragraph "a", effective April 13, 1979

Temporary rate for first month after April 13, 1979; see 68GA, ch 130, §29

b. Any rate of interest specified in any written agreement providing for the payment of interest shall, if such rate was lawful at the time the agreement was made, remain lawful during the entire term of the agreement, including any extensions or renewals thereof, for all money due or to become due thereunder including future advances, if any.

c. Any written agreement for the payment of interest made pursuant to a prior written agreement by a lender to lend money in the future, either to the other party to such prior written agreement or a third party beneficiary of such prior agreement, may provide for payment of interest at the lawful rate of interest at the time of the execution of the prior agreement regardless of the time at which the subsequent agreement is executed.

d. Any contract, note or other written agreement providing for the payment of a rate of interest permitted by this subsection which contains any provisions providing for an increase in the rate of interest prescribed therein shall, if such increase could be to a rate which would have been unlawful at the time the agreement was made, also provide for a reduction in the rate of interest prescribed therein, to be determined in the same manner and with the same frequency as any increase so provided for.

4. Notwithstanding the provisions of subsection 3, with respect to any agreement which was executed prior to August 3, 1978, and which contained a provision for the adjustment of the rate of interest specified in that agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be nine cents on the hundred by the year, and any excess charge shall be a violation of section 535.4.

5. This section shall not apply to any loan which is subject to the provisions of section 682.46. [Code 1979; 68G.A., ch 130, §17, 18, 19]

**535.3 Interest on judgments and decrees.** Interest shall be allowed on all money due on judgments and decrees of courts at the rate of seven cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding the maximum applicable rate permitted by the provisions of section 535.2, which rate must be expressed in the judgment or decree. [Code 1979]

**535.4 Illegal rate prohibited—usury.** No person shall, directly or indirectly, receive in money or in any other thing, or in any manner, any greater sum or value for the loan of money, or upon contract founded upon any sale or loan of real or personal property, than is in this chapter prescribed. [Code 1979]

**535.5 Penalty for usury.** If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for, directly or indirectly, in money or in property, greater than is authorized by this chapter, the same shall work a forfeiture of eight cents on the hundred by the year upon the amount of the principal remaining unpaid upon such contract at the time judgment is rendered thereon, and the court shall enter final judgment in favor of the plaintiff and against the defendant for the principal sum so remaining unpaid without costs, and also against the defen-

dant and in favor of the state, for the use of the school fund of the county in which the action is brought, for the amount of the forfeiture; and in no case where unlawful interest is contracted for shall the plaintiff have judgment for more than the principal sum, whether the unlawful interest be incorporated with the principal or not. [Code 1979]

**535.6 Interest in excess of two percent per month.** Every person or persons, company, corporation, or firm, and every agent of any person, persons, company, corporation, or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money in the sum or amount of more than five hundred dollars a rate greater than two percent per month, shall be deemed guilty of a serious misdemeanor. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law. Provided, however, this section shall not apply to lawful loans under chapter 536. [Code 1979]

**535.7 Assignee of usurious contract.** Any assignee of a usurious contract, becoming such in good faith in the usual course of business and without notice of such fact, may recover of the usurer the full amount of the consideration paid by him therefor, less any sum that may have been realized on the contract, anything in this chapter contained to the contrary notwithstanding. [Code 1979]

**535.8 Loan charges limited.**

1. As used in this section, the term "loan" means a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or a two-family dwelling occupied or to be occupied by the borrower. "Loan" includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

2. a. A lender may collect in connection with a loan a loan processing fee which does not exceed one percent of an amount which is equal to the loan principal less twelve thousand five hundred dollars, except that in the event of an assumption of a prior loan the lender may collect a loan processing fee which does not exceed an amount which is a reasonable estimate of the expense of processing the loan assumption but which does not exceed one percent of the amount assumed. A loan processing fee collected under the authority of this paragraph is compensation to the lender solely for the use of money, notwithstanding any provision of the agreement to the contrary. However, a loan processing fee collected under the authority of this paragraph shall be disregarded for purposes of determining the maximum charge permitted by section 535.2 or 535.9, subsection 2. The collection in connection with a loan of a loan origination fee, closing fee, commitment fee or similar charge other than expressly authorized by this paragraph is prohibited.

b. A lender may collect in connection with a loan any of the following costs which are incurred by the lender in connection with the loan and which are disclosed to the borrower:

- (1) Credit reports.
- (2) Appraisal fees paid to a third party, or when the appraisal is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the appraisal.
- (3) Attorney's opinions.
- (4) Abstracting fees paid to a third party, or when the abstracting is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the abstracting.
- (5) County recorder's fees.
- (6) Inspection fees.
- (7) Mortgage guarantee insurance charge.
- (8) Surveying of property.

(9) Termite inspection.

The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller. Collection of any cost other than as expressly permitted by this paragraph is prohibited.

c. If the purpose of the loan is to enable the borrower to purchase a single-family or two-family dwelling, for his or her residence, any provision of a loan agreement which prohibits the borrower from transferring his or her interest in the property to a third party for use by the third party as his or her residence, or any provision which requires or permits the lender to make a change in the interest rate, the repayment schedule or the term of the loan as a result of a transfer by the borrower of his or her interest in the property to a third party for use by the third party as his or her residence shall not be enforceable except as provided in the following sentence. If the lender on reasonable grounds believes that its security interest or the likelihood of repayment is impaired, based solely on criteria which is not more restrictive than that used to evaluate a new mortgage loan application, the lender may accelerate the loan, or to offset any such impairment, may adjust the interest rate, the repayment schedule or the term of the loan. A provision of a loan agreement which violates this paragraph is void.

d. If a lender collects a fee or charge which is prohibited by paragraph "a" or "b" of this subsection or which exceeds the amount permitted by paragraph "a" or "b" of this subsection, the borrower has the right to recover the unlawful fee or charge or the unlawful portion of the fee or charge, plus attorney fees and costs incurred in any action necessary to effect recovery.

3. A lender shall not, as a condition of making a loan as defined in this section, require the borrower to place money, or to place property other than that which is given as security for the loan, on deposit with or in the possession or control of the lender or some other person if the effect is to increase the yield to the lender with respect to that loan; provided that this subsection shall not prohibit a lender from requiring the borrower to deposit money without interest with the lender in an escrow account for the payment of insurance premiums, property taxes and special assessments payable by the borrower to third persons. Any lender who requires an escrow account shall not violate the provisions of section 507B.5, subsection 1, paragraph "a".

4. If any lender receives interest either in a manner or in an amount which is prohibited by subsection 3 of this section, the borrower shall have the right to recover all amounts collected or earned by the lender, whether or not from the borrower, in violation of this section, plus attorney fees, plus court costs incurred in any action necessary to effect such recovery.

5. The provisions of this section shall not apply to any loan which is subject to the provisions of section 682.46, nor shall it apply to origination fees, administrative fees, commitment fees or similar charges paid by one lender to another lender if these fees are not ultimately paid either directly or indirectly by the borrower who occupies or will occupy the dwelling or by the seller of the dwelling.

A lender shall not collect any fee from a real estate agent for the purpose of reserving or committing funds held or to be held by the lender for loans which are subject to this section. If a lender collects a fee which is prohibited by this paragraph the borrower has the right to recover the unlawful fee, plus attorney fees and costs incurred in an action necessary to effect recovery.

A lender shall not use an appraisal for any purpose in connection with making a loan under this section if the appraisal is performed by a person who is employed by or affiliated with any person receiving a commission or fee from the seller of the property. If a lender violates this paragraph the borrower is entitled to recover any actual damages plus the costs paid by the borrower, plus attorney fees incurred in an action necessary to effect recovery. [Code 1979; 68 G.A., ch 130, §21, 22; 68 G.A., ch 132, §16]

**535.9 Prepayment penalties on loans secured by real estate mortgages prohibited.**

1. As used in this section, "loan" means a loan of money which is wholly or in part to

be used for the purpose of purchasing real property which is a single-family or a two-family dwelling occupied or to be occupied by the borrower, or for the purpose of purchasing agricultural land. "Loan" includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

2. Whenever a borrower under a loan prepays part or all of the outstanding balance of the loan the lender shall not receive an amount in payment of interest which is greater than the amount determined by applying the rate of interest agreed upon by the lender and the borrower to the unpaid balance of the loan for a period of time during which the borrower had the use of the money loaned; and the lender shall not impose any penalty or other charge in addition to the amount of interest due as a result of the repayment of that loan at a date earlier than is required by the terms of the loan agreement. A lender may, however, require advance notice of not more than thirty days of a borrower's intent to repay the entire outstanding balance of a loan if the payment of that balance, together with any partial prepayments made previously by the borrower, will result in the repayment of the loan at a date earlier than is required by the terms of the loan agreement.

3. If any lender receives an amount of interest greater than permitted by subsection 2 of this section, or imposes any penalty or other charge prohibited by subsection 2 of this section, the borrower shall have the right to recover all amounts paid the lender which are in excess of the amounts permitted by subsection 2 of this section, plus attorney's fees and court costs incurred in any action necessary to effect such recovery. [Code 1979; 68 G.A., ch 130, §23, 24, 25]

Amendment effective July 1, 1979; see 68 G.A., ch 130, §25.

## BANKING LAW CHAPTER 524

SECTION 524.905, Code 1979

\* \* \*

10. If a customer elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the state bank shall be governed by section 535.9.

[Addition by 68 G.A., ch 130, §15]

[New Subsection] *Advance interest on prepayments.* Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that a state bank may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this section, however, authorizes a state bank to charge any advance interest or prepayment penalty where prohibited by section 535.9. [68 G.A., ch 130, §15, 26, 31]

## CREDIT UNIONS CHAPTER 533

<sup>39</sup>SECTION 533.9 [Repealed by 68 G.A., ch 130, §30; see 68 G.A., ch 130, §1]

SECTION 533.16, Code 1979

\* \* \*

If a member elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or a two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the credit union shall be governed by section 535.9.

[Addition by 68 G.A., ch 130, §16]

[New Subsection] *Advance interest on prepayments.* Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that a credit union may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this subsection, however, authorizes a credit union to charge any advance interest or prepayment penalty where prohibited by section 535.9. [68 G.A., ch 130, §16, 26, 31]

**SAVINGS AND LOAN ASSOCIATIONS**  
**CHAPTER 534**

SECTION 534.21, Code 1979

\* \* \*

Subsection 10 as it appears twice in the Code 1979 is repealed by 68 G.A., ch 130, §27 and the following enacted in lieu thereof:

10. *Advance interest on prepayments.* Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that the association may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this subsection, however, authorizes an association to charge any advance interest or prepayment penalty where prohibited by section 535.9.

11. \* \* \*

12. \* \* \*

[68 G.A., ch 130, §27]

**IOWA INDUSTRIAL LOAN LAW**  
**CHAPTER 536A**

**SECTION 536A.23, Code 1979**

**536A.23 Powers of industrial loan companies.** No industrial loan company licensed under the provisions of this chapter shall have the power and authority to:

1. Charge, receive or collect interest at a rate exceeding nine cents on the hundred by the year, except that the interest may be computed when the note is made on the full amount of the cash advanced on the loan from the date of the note to the date of the final installment thereof, and the interest so computed may be included in the note, notwithstanding any agreement to pay the entire amount in installments; or the interest may be computed on the amount of the note and discounted or collected in advance when the loan is made, notwithstanding any agreement to pay the entire amount in installments. If the note is repayable in other than equal monthly installments, the interest may be an amount computed on the basis of the effective rates permitted as provided above; provided, however, there shall be no compounding of interest and when an interest rate as authorized herein is advertised, or negotiated for with a prospective borrower, with intent that it be computed by either of the two methods authorized herein, they being the "add on" method or the "discount" method, in such case such rate shall be further described as to the method of computation to be used, but interest computed by either method shall be stated to the borrower as provided in section 537.3210.

If a borrower elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the licensee shall be governed by section 535.9.

The limitation on interest rate which is contained in this subsection shall not apply to any loan in which the borrower is a corporation or investment trust or any other person who is referred to in section 535.2, subsection 2.

2. \* \* \*

3. \* \* \*

4. \* \* \*

[68 G.A., ch 130, §28, 31]

**CONSUMER CREDIT CODE**  
**CHAPTER 537**

SECTION 537.1301, Code 1979

\* \* \*

20. *Finance charge.*

a. Except as otherwise provided in subsection "b", "finance charge" means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable:

(1) Interest or any amount payable under a point, discount or other system of charges, however denominated, except that, with respect to a consumer credit sale of goods or services, a cash discount of five percent or less of the stated price of goods or services which is offered to the consumer for payment by cash, check or the like either immediately or within a period of time, shall not be part of the finance charge for the purpose of determining maximum charges pursuant to section 537.2401. A cash discount permitted by this subparagraph shall not be considered part of the finance charge for the purpose of determining compliance with Truth in Lending pursuant to section 537.3201 if it is properly disclosed as required by the Truth in Lending Act as amended to and including October 28, 1975 and regulations issued pursuant to that Act as so amended prior to October 28, 1975.

This subparagraph (1) of paragraph "a", subsection 20, enacted as a temporary provision is re-enacted as permanent law and as such supersedes the prior subparagraph (1).

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

[68 G.A., ch 130, §28, 31]